

Name THOMAS CASH
 Prison Number 1203562
 Place of Confinement H.D.S.P.

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

THOMAS CASH, Petitioner,)
 (Full Name))
 vs.) CASE NO. _____
CALVIN JOHNSON, Respondent,) (To be supplied by the Clerk)
 (Name of Warden, Superintendent, jailor or)
 authorized person having custody of petitioner)
 and) PETITION FOR A
The Attorney General of the State of Nevada) WRIT OF HABEAS CORPUS
 () PURSUANT TO 28 U.S.C. § 2254
 () BY A PERSON IN STATE CUSTODY
 () (NOT SENTENCED TO DEATH)

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1. Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: DISTRICT Court/Douglas E. Smith Judge.
 2. Full date judgment of conviction was entered: 8/23/2018. (month/day/year)
 3. Did you appeal the conviction? * Yes ____ No. Date appeal decided: 10/11/2019
 4. Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? * Yes ____ No. If yes, name the court and date the petition was filed: DISTRICT Court 8/3/2020 Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? * Yes ____ No. Date the appeal was decided: 3/4/2022. Have all of the grounds stated in this petition been presented to the state supreme court? * Yes ____ No. If no, which grounds have not? _____.
 5. Date you are mailing (or handing to correctional officer) this petition to this court: ____ / ____ / ____.
- Attach to this petition a copy of all state court written decisions regarding this conviction.

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? Yes
 No. If no, what was the prior case number? _____ And in what court was the prior action filed? _____
 Was the prior action denied on the merits or dismissed for procedural reasons (check one). Date of decision: ____ / ____ / _____. Are any of the issues in this petition raised in the prior petition? Yes No. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition? Yes No.
7. Do you have any petition, application, motion or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? Yes No.
 If yes, state the name of the court and the nature of the proceedings: _____
8. Case number of the judgment of conviction being challenged: C-18-329699-1
9. Length and terms of sentence(s): LIFE WITHOUT
10. Start date and projected release date: NONE
11. What was (were) the offense(s) for which you were convicted: SECOND DEGREE MURDER, LARGE HABITUAL CRIMINAL STATUTE
12. What was your plea? Guilty Not Guilty Nolo Contendere. If you pleaded guilty or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement:

13. Who was the attorney that represented you in the proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	<u>KENNETH LONG, ESQ</u>	_____	<input checked="" type="checkbox"/>	_____
trial/guilty plea	<u>KENNETH LONG, ESQ</u>	_____	<input checked="" type="checkbox"/>	_____
sentencing	<u>KENNETH LONG, ESQ</u>	_____	<input checked="" type="checkbox"/>	_____
direct appeal	<u>BRIAN RUTLEDGE</u>	<input checked="" type="checkbox"/>	_____	_____
1st post-conviction petition	_____	_____	_____	<input checked="" type="checkbox"/>
appeal from post conviction	<u>JEAN J. SCHWARTZER</u>	_____	<input checked="" type="checkbox"/>	_____
2nd post-conviction petition	_____	_____	_____	_____
appeal from 2nd post-conviction	_____	_____	_____	_____

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____
_____.

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____.

If yes, name of court: District Court date petition filed 8 / 3 / 2020.

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____.

If yes, did you raise this issue? Yes No. If no, explain why not: _____.

► **Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____.

If yes, name of court: _____ date petition filed _____ / _____ / _____.

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____.

If yes, did you raise this issue? Yes No. If no, explain why not: _____.

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____.

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(a) Ground One:

10 Petitioner 4th, 5th, 6th, and 14th amendments was violated when
11 it used Petitioners' Post Arrest Silence by the State.

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14 Supporting Facts:

15 The State impermissibly elicited testimony about Petitioners Post arrest silence. (AA 1236-
16 98 and 1315-35) Petitioner did not testify during the trial. However, Petitioner was not
17 protected from self incriminating evidence that attacked Post arrest Silence. The
18 Presjudicial Inadmissible. Post arrest silence (PAS) was extremely harmful to Petitioners
19 Substantial constitutional rights and effected the outcome of the Proceedings. The
20 State Pressed the inference of guilt through rebuttal witness calling and closing
21 arguments, making the closure of trial Presjudicial. Such error and inclusion of other
22 errors Persuaded the Jury to a guilty verdict. The State called Gill as a rebuttal
23 witness without being required to state who the witness was to rebuttal, what the
24 rebuttal was to attack, and no hearing was set to establish limitations. The State
25 may rebuttal defense witness with the witness statements and testimonies but
26 Petitioner P.A.S. is error that's harmful. The P.A.S. was grossly used as evidence of guilt
27 toward Petitioner. The error seriously effected the fairness, integrity, on public reputation
28 of Judicial Proceedings. The States case was not strong as a sole witness incriminated
Petitioner. This error falls under Judicial and Prosecutorial misconduct, the requisite reversal.

(b) Ground Two:

The Court violated Petitioners' 6th, 5th, 8th, and 14th amendments through an illegal sentence.

Supporting Facts:

Petitioner was acclaimed as a habitual criminal under the Nevada Revised Statute 207.110. (see Supreme Court Affirmation order No. 77018, September 12, 2019, pp. 1-4). The lower Court found Petitioner a habitual criminal by recognizing two alleged prior felony convictions. One being

See Judgment of conviction that validates two alleged prior felony convictions. Any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been twice convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, is a habitual criminal and shall be punished for a category B felony by imprisonment in the State Prison for a minimum term of not less than five years and a maximum term of not more than twenty years. Since the statute requires prior felony convictions the State can not count the present conviction as a third prior felony. Thus, Petitioner was sentenced to life without the possibility of parole.

Petitioner is currently suffering an error sentence.

1 (c) Ground Three:

2 Petitioners 4th, 5th, 6th, 8th, and 14th amendments was violated
 3 through the Prosecutorial Misconduct.

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6 Supporting Facts:

7 During the trial proceedings the State misstated evidence in order to create Prejudice
 8 towards Petitioners substantial rights. The State expressed Personal opinion that
 9 Davis Punched Petitioner in the nose to take Devine away from that act to
 10 dilute Petitioners self defense against Davis and Devine. (see AA 1271-72)

11 The State testified that witness Flores could see the incident just fine. (AA 1276)

12 Though she testified her visual was good until she opened the front door and
 13 the ordeal was basically concluded. (AA 840-68). The State argued witness

14 Flores heard the victims impact and ran outside. This is complete fabrication
 15 to create false inflammatory allegation testimony. (AA 1279 and contrary 847). State

16 also claimed that witness Flores gave testimony to seeing Petitioner
 17 deliver the first punch, which is a foul blow. (AA 1321-28). No evidence

18 exist of the victim receiving two sharp force injuries though the
 19 State argued that Petitioner plunged the knife into the victim twice.

20 This inflammatory argument was a foul misleading and Prejudice
 21 to Petitioners substantial rights. The State also violated Petitioners

22 Post Arrest Silence that made it impossible for a fair trial

23 (see Ground 1) Prosecutorial Misconduct shall not afford the State to

24 have another shot at Petitioner once such misconduct is concluded
 25 as harmful error, as it places Petitioner at risk of Double Jeopardy.

26 The State argued Petitioners Juvenile criminal history at the
 27 sentencing hearing that was tainting and Prejudice. (AA 1350-78)

28 The State failed to properly file the habitual criminal statute.

1. The State failed to Properly file the habitual Criminal status. The
2. State never added the habitual Criminal statute as a charged
3. Count. The State failed to show the Court that Petitioner was
4. represented by Counsel at the moment the allege Prior convictions
5. was affirmed as a conviction. Petitioner appeal Counsel failed
6. to add this ground towards Petitioners direct appeal even though
7. Petitioner pleaded for such. The State simple file a sentencing
8. memorandum and assumed the habitual criminal statute was
9. properly filed. (AA1345) The Court failed to confirm if the State
10. properly filed the statute properly. Such review would have
11. shown the State failed to follow the required Procedure. The
12. failure of the statute being charged as an official charged
13. Count makes the sentence under the statute invalid. It shall
14. be noted that Petitioners AA 1346-49 is not in Petitioners
15. Possession. Prior Counsel never provided them. Please strike lines 14-15.
16. The Prosecutorial Misconduct is valid grounds for reversal.
17. The State never filed a proper notice of intent to seek the
18. habitual criminal statute. An oral or memorandum that the State
19. may allege is not enough.
20. The State Produce the Judgment of conviction out of California to
21. establish Prior convictions but such fact infirmity could only be
22. established as fact only in the State of the conviction after conviction
23. of Primary offense. Making the States exhibits invalid and sentence a
24. error.
25. —
26. ① Petitioner allege Priors was very stale and or trivial.
27. "
28. " - In

1 (d) Ground Four:

2 Petitioners 6th and 14th amendments was violated through the Courts
 3 Presentation of Jury instruction's.

4 _____
 5 _____
 6 Supporting Facts:

7 Jury instruction numbers 1, 17, 20, and 31 fails to be neutral and unbias.
 8 It informs the Jury that they can convict on certain terms but shY's away
 9 from being unbias by also mentioning that the contrary shall produce a
 10 verdict of not guilty. Jury instruction numbers 21, 25, and 27 expresses the
 11 position of the instruction but fails to instruct the Jury if such instruction
 12 is believed they may find the defendant not guilty. Then Jury instruction
 13 number 22 and 23 conflicts with Jury instructions 21, 25, and 27. Thus,
 14 attempts to confuse the Jury and do away with or waterdown
 15 Jury instruction numbers 21, 25, and 27. Instruction No. 23, fails to
 16 express what "negate" means and fails to express the contrart
 17 to become impartial. The instruction disputes fear as insufficient
 18 to justify a killing. This is designed to take away the belief of
 19 imminent danger of self and or others being sufficient, and attacks
 20 the Post arrest silence of the States introduce testimony, and
 21 statements of, "Defendant not wanting to get hit again."
 22 Jury instruction No. 30 express "abiding conviction," the Supreme
 23 Court already ruled not to use. Jury instruction number 37 instructs
 24 the Penalty Phase not to be considered in deliberation but then biasly
 25 express first degree murder penalty. The first degree murder penalty
 26 instruction should have been A isolated instruction and not included with a
 27 impartial instruction since such requirement literally express conviction. (see Jury
 28 instruction's No.'s 1, 17, 20, 21, 25, 22, 27, 23, 30, 31, and 37).

1 (e) Ground Five:

2 Court violated Petitioners' 6th and 14th amendments was
3 violated through the errored Jury Instruction Proceedings.

6 Supporting Facts:

7 The Jury instruction Proceeding was conducted in a manner
8 where Petitioner was not informed the true full context of any
9 of the Jury instruction's. (AA 1108 - 1114). Instead of the
10 instruction's being read word for word each one was given
11 a number and title. The title consisted of the first
12 few words of the instruction or what the instruction
13 was encompassing. Doing this left Petitioner unaware of
14 the true content of each Jury instruction. Thus, enabling
15 Petitioners' objection's and challenges when necessary.

16 The Court errored on this conduct was extremely harmful
17 since it misinformed the Jury bias laws and confusion.

18 This error also falls under ineffective Counsel of
19 Petitioners Counsel.

1. (f) Ground six: Petitioners 6th, 8th, and 14th amendments was
 2. violated through Counsels ineffective assistance of Counsel.
 3. Supporting facts:
 4. I. Counsel failed to investigate Petitioners' case to be adequately
 5. Prepared for trial. This failure influence the outcome of
 6. Petitioners trial. Petitioner inquired to Counsel of what did he
 7. actually do on the case and Counsel responded that he, "reviewed
 8. the States open file." Counsel did absolutely nothing on an
 9. investigative stand point beside the above mentioned. Counsel
 10. failed to have the investigator or himself to interview any of the witnesses
 11. toward the case. In fact, Counsel manipulative Petitioner to assume that
 12. investigative work was foregoing. Counsel claimed he had a big biker looking
 13. dude as an investigator and would commet on how Petitioners daughter
 14. looked, only to influence Petitioner to assume that he spoke to a witness.
 15. In actuality Counsel interviewed no witnesses at all. Counsel did not
 16. even subpoena any witnesses for trial. Thus, Counsel did not conduct
 17. proper preparation for trial. Petitioners defense witnesses was only
 18. able to testify is because Petitioner informed them to show up to
 19. the Courthouse and wait outside the courtroom. Since they testified
 20. at the Preliminary hearing they was allowed to testify even
 21. though Counsel did not have them subpoenaed, or on the witness
 22. list. What Counsel did was investigate the case during trial. (Exh. No 1 p.2)
 23. Counsel failed to acquire a Pathologist expert witness to view the evidence
 24. of the case to conclude in reference to the evidence the most probable
 25. Position Petitioner and the victim was in at the time of the stab, the
 26. number concluded on the stab, and the probability or lack of in relations
 27. towards the States theory of a standing up plunge, and two sharp force stabs.
 28. This ineffectiveness contributed towards Petitioners conviction. (see
 Ground 3); AA 1291, state argue two sharp injuries; AA 699-700, Pathologist

1. for State can't tell the position of the body when stabbed).
2. Counsel fatally failed to explore all avenues of the case
3. that could have change the strategy Plea bargaining stage
4. and or the outcome of the trial, and or penalty stage. This was
5. done when Counsel failed to canvas Petitioners' neighbor's to
6. see if they had relevant information to the case and other
7. relevant witnesses to introduce Ezekiel Devine Prior
8. bad act of several layers. (See Exhibit No. 1)
9. Counsel's failure to interview Sandi Cash hinder
10. Petitioner to fully cross examine Devine about him
11. being of not visiting the place of residence of Petitioners
12. home, the recent threats Devine made toward the
13. home and Petitioner, and the intertwiness of
14. the prior acts in relations to the case. This failure,
15. to canvas Ms. Cash Prejudice Petitioner. (Exh. No. 1, p. 1)
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SUPPORTING facts:

1. II. Failure to adequately establish Petitioners theory of defense cause Counsel to perform well below the required effective standard. Counsel failed to produce jury instruction's that would have showed the Jury established law that Petitioner had the right of Defense of Others and continue into the instruction of Self Defense. Counsel lack of such afforded Petitioner to be Painted as the bad guy for not just calling the Police or verbally requesting Davis to leave. Had Counsel represented Petitioners best interest the Jury would have been aware that Petitioners action of defending his Daughter was completely within the law.

11. Counsel failed to establish foundational evidential evidence of why Petitioner had a small work knife on Petitioners person, so when 12. Counsel attempted to explain such it was dismissed through the 13. Court.

15. Counsels' failures left argument for the State and Court and 16. Jury to view Petitioner as an weapon carrier at all times for the 17. wrong reasons.

18. Without Counsel creating a foundational defense and proffer of instructions to the Jury Counsel argument becomes weak 19. as Jury instruction No. 41 explains attorneys argument 20. is not evidence. This ineffective Counsel negatively effected 21. Petitioners' substantial rights.

23. SUPPORTING facts: III. Counsel failure to object to witness Kyriell Davis 24. testimony ranting establish Counsel to perform well below the 25. effective standard requirement.

26. Counsel was ineffective when Counsel allowed the State 27. to call Davis to the stand and just rant the incident through 28. testimony without the State being required to break the testimony

1. into Procedural ask and answer questioning. (AA896-900)
2. Counsel ineffectiveness of this error allows the State
3. witness the opportunity to rant the vital part of Davis
4. testimony, eliminating room for error. After such ranting
5. the State was allowed to systematically go back only
6. then to rerun the story through asked and answering
7. Procedure. Never did Counsel object to the Question's
8. being already answered through the prior rant (AA900-946)
9. This engrains into the jury inflammatory testimony. Such error
10. violated Petitioners substantial rights.

^{Supporting Facts:} IV. Counsel failed to protect Petitioners' Post arrest silence. This failure effected Petitioner substantial rights.

11. Petitioner defer supporting facts on Ground No. 1 (AA1236-60 id.).
12. Counsel should have objected to the States rebuttal witness Matthew Gills. If the Court failed to recognize the prejudicial effects of the rebuttal witness Counsel should
13. have the requested rebuttal witness first testify outside the presence of the Jury to renew the objection once the
14. Prejudice was shown. Petitioner basically was vacant of
15. Counsel at the moment of this ineffectiveness.

^{Supporting Facts:} V. Counsel's failure to impeach witness KYriell Davis created ineffectiveness. Witness Davis was the sole witness for the State that testified to seeing a knife and alleging Petitioner was moving toward the victim with the knife. No testimony exist of any person seeing Petitioner chase and stab the victim. Being that the State is depending on Davis testimony primarily, an attack on his credibility could have changed the outcome of the verdict.

1. Davis committed an obvious Perjury while giving
 2. testimony for the State when he falsely testified that
 3. witness Britney Tuner left the scene once the fight with
 4. himself and Petitioner occurred, and Petitioner had to call her
 5. back to the scene to get the baby.^① (AA 912-15)
6. This false Perjury could have easily been impeached through
 7. the testimony of Tuner, (AA 1114-70) through Kinchron, (AA 1170-1233),
 8. White, (AA 1081-1106), and possibly Flores, (AA 839-68). Though
 9. the impeachment did not strike at the stab incident, such
 10. Perjury would have gone to insight to the jury that Davis
 11. committed Perjury, and his testimony can be subject to full
 12. waiver as a disregard of testimony, or in part, and can be
 13. weighed when considering Davis credibility. This being the sole
 14. witness for the State incriminating Petitioner could have changed
 15. the outcome of the verdict. (see Jury Instruction No. 34)
16. (g) Ground seven: Petitioners' 6th and 14th amendments was violated
 17. due to accumulative errors.
18. Supporting facts: Accumulative errors of the State, Counsel, and Court effective
 19. Petitioner from receiving an impartial trial proceeding that fatally effective
 20. Petitioners' substantial constitutional rights. (See grounds 1-6).
21. (h) Ground eight: Petitioners 6th and 14th amendments was
 22. violated when Appeal Counsel filed Petitioners Writ of
 23. Direct Appeal before consulting with Petitioner.
24. Supporting facts: Petitioners appeal counsel failed to
 25. communicate with Petitioner before he wrote up Petitioners
- 26.
- 27.
28. ① Line 4; sixth word "Petitioner" is meant to be worded Davis.

1. Direct appeal. Petitioner had no line of communication being
 2. exercised by Counsel. Once Counsel finally came to visit Petitioner
 3. the direct appeal was already written. Petitioner informed Counsel
 4. to hold off on filing the Writ because Petitioner wanted to research
 5. the grounds drafted and add additional grounds after Petitioner
 6. completed research, such as Speedy trial violations and Prosecution
 7. misconduct. The next day Counsel filed the disputed Writ. Thus,
 8. Counsel attempted to make it look like consulted with Petitioner
 9. but did no such thing. This ineffective appeal Counsel hinder Petitioners
 10. foundational grounds of Prosecution misconduct that Counsel address with
 11. merits/citations, jury instruction and procedure, ect. (see grounds 1-7).
 12. This error was harmful to Petitioners' substantial rights.

13. (I) Ground Nine: Petitioners 6th and 14th amendments was violated
 14. when the Court violated the Speedy Trial Act.

15. Supporting facts: When it came time for the Court to honor Petitioners nonwaiver
 16. of the Speedy Trial Act the Court errorty did a continuance on the trial against
 17. mutual consent. Petitioner is without the minute records to defer clarity,
 18. so Petitioner Preserve this ground.

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WHEREFORE, petitioner prays that the court will grant him such relief to which he is entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

(Name of person who wrote this
complaint if not Plaintiff)

Thomas Cash

(Signature of Plaintiff)

(Date)

(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at H.D.S.P. on 8-18-22.
(Location) (Date)

Thomas Cash
(Signature)

1203562
(Inmate prison number)